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SENSITIVE

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SUBJECT: SCENESETTER FOR AUSTR EISSENSTAT'S VISIT TO COSTA RICA:
GOCCR READY FOR FINAL LEGISLATIVE PUSH?

REF: A. SAN JOSE 410

[1](#)B. SAN JOSE 508 and previous (NOTAL)

[1](#)1. (SBU) SUMMARY: Embassy San Jose warmly welcomes AUSTR Everett Eissenstat and his team. The Arias administration seems prepared for a final political push on the remaining CAFTA-DR legislation, and sees the AUSTR visit as an essential component of that push. GOCCR officials evince confidence about completing all CAFTA-related bills and regulations in time to meet the October 1 certification deadline, but they know the road ahead is steep. Although eight of 13 CAFTA-related bills have been completed, the five remaining touch on controversial intellectual property (IP), insurance and biodiversity issues. The GOCCR's best case scenarios project completion of the final legislation in August-September, well after the informal mid-July legislative deadline suggested during Eissenstat's April visit (Ref A). The four CAFTA-related telecommunications regulations are currently undergoing final review, and are expected to be completed in August. We agree that the time is right for the AUSTR visit. The Arias administration is convening all the leaders of its pro-CAFTA legislative coalition, plus key private sector representatives for a (long overdue) pep talk. (SEE REVISED SCHEDULE, PARA 9.) The legislators know that Costa Ricans from across the political spectrum want to close the CAFTA chapter and move on to other important issues. As from the start of this long and winding road, success continues to depend on the GOCCR sustaining its political discipline and focus. END SUMMARY.

THE POLITICAL PUSH

[1](#)2. (SBU) The GOCCR views this AUSTR visit as primarily political, and part of a broader concerted effort to energize the legislature. On June 19, Minister of the Presidency Rodrigo Arias described the other components of this "push" to the Ambassador. Arias will convene the entire PLN party faction on June 23 to get them in line. There will be no legislative travel (and perhaps no recess) until the CAFTA work is completed. On June 25, Arias is to meet with "moderate" legislators from the opposition PAC party, including new faction leader Francisco Molina, to agree on a way forward. Arias does not expect any PAC member to support CAFTA, but he believes a small group can be persuaded not to stand in the way. Arias is also counting on help from ex-PAC member Andrea Morales (who left her party and declared herself an independent on June 13). The embattled Morales chairs the Juridical Committee, which is working on the remaining IPR bill. With all 38 votes in the pro-CAFTA coalition required to keep the final bills moving, and with fissures periodically appearing in that coalition, Arias is looking for a little wiggle room, in the form of one or two more votes to guarantee quorum, approve extra sessions, and make better use of the legislature's crowded calendar.

13. (SBU) The Ministry of Foreign Trade (COMEX) views the AUSTR visit as an opportunity to reiterate directly to legislators the CAFTA certification requirements, and to make very clear what is required for CAFTA compliance. COMEX staff tells us that they do not see Eissenstat as stepping in "between" the GOCR and the legislature. Instead, they view AUSTR's message as reinforcing their own, i.e., that the legislative details COMEX is insisting upon are in fact necessary for the implementing legislation to be CAFTA-compliant. COMEX does not expect (or want) AUSTR to be drawn into a detailed discussion of technical details (although time is built into the visit schedule for separate staff-level discussions, see below). In addition, COMEX hopes the AUSTR visit will spark a positive dialogue with the pro-CAFTA coalition, which will generate "creative" solutions to pending issues.

THE LAGGING LEGISLATION

14. (SBU) Since AUSTR Eissenstat's last visit, progress has been spotty. Four bills (The Budapest Treaty, The International Agreement on Trademark Rights, the UPOV Convention bill, and the bill opening the telecommunications sector) have been signed into law. The latter is still pending publication in the official gazette, the last step in implementation. The remaining five bills have been challenging, more often because of problems within the pro-CAFTA G38 coalition than from opposition without. The five-member Libertarian Party (ML) and one member of the Social-Christian Unity Party (PUSC) have been the most troublesome in the last two months, blocking quorum, opposing fast track rules and questioning substantive details (such as in IPR penalties). The GOCR believes it has overcome these obstacles and that all 38 members of its coalition (perhaps aided by a few moderate members of the opposition) are finally ready to move on.

15. (SBU) The following is a June 20 snapshot of the remaining legislation. The GOCR is counting on the August extraordinary session of the legislature to wrap up the remaining legislation, although it appears likely that at least one bill may not be fully approved (second vote) until early September:

-- IPR enforcement: The Second Plenary Commission is completing IPR penalty revisions (in Article 52) requested by the Constitutional Chamber (Sala IV) of the Supreme Court. The GOCR is aiming for a first vote on the corrected bill the week of June 23. If the corrected bill is sent to the Sala IV for review (as is expected) final approval would not take place before August;

-- IPR catch-all bill ("number 12"): Under debate in the Juridical Committee. The GOCR is aiming for Committee approval by the end of June, and a first plenary vote in July. Fast Track status was approved, which will limit debate, but the GOCR will need 38 votes to approve the extra sessions required to move quickly. With the expected 30-day Sala IV review, the GOCR is aiming for final approval in August or September. GOCR officials acknowledge that the long delay caused by the ML party's stubborn debate about, and microscopic review of, this bill will likely make it the last to be approved. One of the articles in the IPR enforcement bill opposed by the Sala IV (Article 71) was moved to this legislation;

-- Insurance bill: Was to emerge from completed Sala IV review on June 7, but returned on June 4, instead, to "clarify" why some documents were missing from the package submitted to the Court. This technically requires another full 30-day Sala IV review. GOCR officials see this as a blatantly political maneuver by one of the two anti-CAFTA magistrates in the Sala IV. The original package has been corrected and re-submitted, and GOCR officials believe the Sala IV will not take another 30 days to issue a ruling. They are hopeful for final approval in late July or August;

-- Telecom modernization bill: Under Sala IV review. Should return to the legislature in early July, with the GOCR aiming for final approval in late July or August; and,

-- Amendments bill: Voted out of committee on June 13, but some text was missing. The bill may have to be corrected in plenary debate. Fast Track status was approved, but 38 votes will be needed to schedule the extra sessions required. GOCR aiming for plenary debate to begin

in early July, followed by Sala IV review (by early August) and final approval later in August.

REMAINING ISSUES (AND REGULATIONS)

¶6. (SBU) While all the pending legislation is urgent at this point, three specific issues are being cited with particular concern: biodiversity, IPR data protection, and insurance. The following is our understanding at this point, but USTR would likely have more details:

-- COMEX believes the biodiversity concerns are held by only a few legislators, and can be overcome by AUSTR "clarifying" the USG position. Revised legislative language may not be required;

-- The IPR data protection issues can be resolved by more technical staff-level discussion, according to COMEX; (On that issue, Fedefarma contacts tell us that there is no new health bill before the legislature. The bill that was on the agenda was pulled some months ago by the Health Ministry for further review);

-- On insurance, the GOCR believes a legislative solution (which has been rejected as too politically difficult by GOCR officials, pro-CAFTA legislators and the private sector) is off the table, and that another mechanism (such as a side letter) can be found to resolve the national guarantee issue; and

-- On IPR penalties, Minister Arias and other GOCR leaders are confident the penalty regime worked out in recent discussions with USTR has satisfied concerns about that issue.

¶7. (SBU) The four telecommunications regulations which are also part of CAFTA implementation are currently going through an internal final review. The four regulations are: 1) Access and Interconnection, 2) General Communications, 3) Competition, and 4) Access and Universal Service. The three entities charged with writing the regulations are the Ministry of Environment, Energy and Telecommunications (MINAET); the regulatory authority ARESE, through its future telecommunications superintendency SUTEL; and COMEX. (Note that SUTEL will be established under the telecom modernization bill when it becomes law.) The final versions of these regulations will go through a public audience and

review process and are expected to be published in August.

COMMENT

¶8. (SBU) The GOCR knows what it needs to do in order to pass the remaining CAFTA legislation and seems re-committed to doing it. The GOCR, the pro-CAFTA coalition and even the opposition are all tired of CAFTA and eager to get on with other business before the pre-2010 election maneuvering (which has already begun) dominates domestic politics next year. As recently as one week ago, key PLN legislators and legislature staff were not optimistic that all CAFTA bills could be completed even by September. We have seen this despondency-determination cycle before, however, in the sense of drift last November which was replaced by a sense of purpose in the legislature from December-March. The GOCR needs to light that sort of fire again. The highest levels of the government remain completely seized by CAFTA. The President spoke of little else when the Ambassador called on him June 12, for example. CAFTA is the Arias administration's top priority, and is closely identified with the President himself. The Arias brothers know that if they can't follow through on this, they may not be able to follow through with other essential pending initiatives on domestic security or energy. AUSTR Eissenstat's visit thus comes at an opportune moment. The Ambassador recommends that the three-fold message should be: no renegotiation; no second extension; and a warning that Costa Rica, once the region's CAFTA leader, is now falling further and further behind. These familiar themes bear repeating over and over again here. END COMMENT.

VISIT SCHEDULE (REVISED)

19. (SBU) The following is the schedule as of 1500 local on June 23. It has been revised from earlier versions, to split the meetings with legislators into three sessions. A more detailed version was emailed to USTR and will be available to AUSTR and team upon arrival. COMEX will provide interpretation for all events involving AUSTR:

TUESDAY, JUNE 24

0900-1000: MEETING WITH GOCR EXECUTIVE BRANCH AND SOME LEADERS OF THE G38 PRO-CAFTA COALITION, President's Office
(Ministers Arias and Ruiz will lead the GOCR side.)

The strongest CAFTA supporters in the legislature will be included (from the President's PLN party and the PUSC party).

This session would "frame the day's objectives," according to COMEX. Because the GOCR's closest allies are participating, COMEX believes that "nothing should be held back" with this group, and that this session should be/can be more candid than the later sessions with other party members. COMEX also believes these legislators will ask what happens if the implementing legislation is not done in time.

1030-1230: MEETING WITH OTHER LEADERS FROM G38 PRO-CAFTA COALITION, CHATEAU RESTAURANT, SAN PEDRO
(Minister Ruiz, Amb. Duenas, VM Thompson, and VM Pacheco will lead the GOCR side.)

In the first segment, the AUSTR and GOCR teams will meet with independent, but pro-CAFTA legislators. In the second segment, the AUSTR and GOCR teams will meet with members of the pro-CAFTA (but more problematic) ML party.

These sessions are not to "substitute" for the "lobbying" work COMEX must do (according to COMEX staff), but they afford an opportunity to better "explain" the USG position. The discussion will focus on how to move ahead and complete the legislative work in time. Legislators may seek to explain why the process is so uniquely slow in Costa Rica, but our focus should be to look forward, not backward.

1230-1430: QWORKING LUNCH, CHATEAU RESTAURANT

1500-1530: OVERVIEW OF PENDING REGULATORY ISSUES (at COMEX)
(Ministers Ruiz, Dobles, Amb. Duenas and VM Thompson lead GOCR side.)

1530-1630: QWRAP-UP MEETING WITH GOCR EXECUTIVE BRANCH
(Ministers Ruiz, Amb. Duenas and VM Thompson lead GOCR side.)

This session should agree on next steps and a way ahead.

1900-2100: QRECEPTION HOSTED BY AMBASSADOR CIANCHETTE (Ambassador's Residence)

Note that the morning of June 25 has been left open for possible follow-on meetings before AUSTR departs. USTR team remains until June 26 for possible follow-up technical meetings. COMEX reconfirmed on June 23 that follow-on meetings may be scheduled as a result of the June 24 sessions.

CIANCHETTE